

1 **Nicholas J. Henderson, Oregon Bar #074027**

2 Motschenbacher & Blattner, LLP

3 117 SW Taylor St., Suite 200

4 Portland, OR 97204

5 Telephone: (503) 417-0508

6 Facsimile: (503) 417-0528

7 Email: [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com)

8 Attorneys for Debtor

9 The Michael King Smith Foundation

10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **FOR THE DISTRICT OF OREGON**

12 In re:

Case No. 16-30233-rld11

13 THE MICHAEL KING SMITH  
14 FOUNDATION,

15 Debtor.

DEBTOR'S NOTICE OF INTENT TO  
SELL REAL AND PERSONAL  
PROPERTY; MOTION FOR  
AUTHORITY TO SELL SUCH  
PROPERTY FREE AND CLEAR OF  
LIENS; AND NOTICE OF HEARING

18 NOTICE IS HEREBY GIVEN, that the Michael King Smith Foundation (the "Debtor"),  
19 as Debtor in possession, intends to sell the property described below, and moves the Court for  
20 authority to sell said property free and clear of liens pursuant to 11 U.S.C. §§ 105 and 363(f).

21 **If you wish to object to any aspect of the sale or fees disclosed herein, you must: (1)**  
22 **attend the hearing set in Section 25 below, and, (2) within 23 days of the later of either (a)**  
23 **the date next to the signature below; or (b) the service date in Section 26 below, file with**  
24 **the Clerk of Court at 1001 SW 5th Ave. #700, Portland, OR 97204: (a) a written response**  
25 **stating the specific facts upon which the objection is based, and (b) proof that a copy of the**  
26 **response was served on the movant.**

27 **This document shall constitute the notice required by LBR 2002-1.**

1 In support of this motion, the Debtor represents:

2 **BACKGROUND**

3 1. On January 26, 2016 (the “Petition Date”), the Debtor filed herein a voluntary  
4 petition under Chapter 11 of the Bankruptcy Code. As of the date hereof, no trustee or examiner  
5 has been requested or appointed and no official committee of creditors has been appointed.

6 2. The Debtor is an irrevocable trust, established and administered in Yamhill  
7 County, Oregon. The Debtor was established pursuant to that certain Trust Agreement for The  
8 Michael King Smith Foundation, dated November 15, 2006.

9 3. Among other things, the Debtor was established for the purposes of acquiring,  
10 maintaining, preserving and facilitating the display of historical assets, primarily aircraft and  
11 other vehicles relevant to flight and travel in space, and to provide facilities and means to support  
12 such acquisition, maintenance, preservation and display.

13 4. The Debtor was established to operate as a non-profit, tax exempt organization  
14 that would operate exclusively for charitable, religious, scientific, literary, and educational  
15 purposes.

16 5. Presently, the Debtor’s affairs are managed by three co-trustees, Jay Goffman,  
17 Lisa Anderson and James Ray.

18 6. Since it was established, the Debtor’s primary function was to develop and  
19 support the Evergreen Aviation and Space Museum (the “Museum”), a world-class aviation  
20 museum located in McMinnville, Yamhill County, Oregon.

21 7. Since 2006, the Debtor has acquired numerous items of historical significance,  
22 including vintage aircraft and weapons, and has either donated such items to the Museum, or has  
23 loaned such items to the Museum at no cost.

24 8. Since 2006, Delford Smith, the Debtor’s previous trustee, and the Debtor directed  
25 the construction of the Museum campus, located at 500 NE Captain Michael King Smith Way,  
26 McMinnville, Oregon. The campus includes state-of-the-art facilities, including the “Aviation  
27 Building,” which houses the famous Spruce Goose, a Space Museum, and a large format theater  
28 building used to show historical and educational films.

1           9.       The Museum campus also features a unique water park that was built to display  
2 aircraft and aviation educational materials. The water park is the primary source of revenue for  
3 the Museum campus. While the Debtor owns the water park, it is currently leasing the water  
4 park to the Museum at no cost, providing the Museum with the ability to generate revenue in  
5 excess of one-million dollars, rent free.

6           10.      From the period of November 15, 2006, to October 31, 2014, the Foundation and  
7 Mr. Smith, along with two business entities founded by Mr. Smith—Evergreen Vintage Aircraft,  
8 Inc., and Ventures Holdings, Inc.—contributed in excess of \$150,000,000 to acquire land,  
9 develop and construct the campus occupied by the Museum, and to acquire aircraft and other  
10 items of historical significance.

11          11.      To develop and construct the Museum campus, the Debtor and Mr. Smith hired  
12 Hoffman Construction Company of Oregon (“Hoffman”). Since 2006, Hoffman has been paid in  
13 excess of \$160,000,000 for development and construction services related to the Museum  
14 campus and its surroundings.

15          12.      Prior to the Petition Date, Hoffman and the Debtor executed a stipulated judgment  
16 and money award for unpaid construction invoices owed to Hoffman related to construction of  
17 the Museum campus. The stipulated judgment was entered in the Yamhill County Circuit Court  
18 on or about in the principal amount of \$1,949,412.35.

19          13.      To enforce its judgment, Hoffman has obtained a writ of execution, and scheduled  
20 a foreclosure sale to auction certain property belonging to the Debtor, including the water park.

21          14.      Prior to the filing of the Bankruptcy Case, the Debtor was negotiating with  
22 Hoffman, to satisfy the Hoffman judgment from the sale of the Debtor’s assets. Just prior to  
23 filing, the Debtor was in negotiations for a sale that would satisfy all of the Foundation’s debts,  
24 and would provide the Museum with continued use of the water park and other assets currently  
25 owned by the Debtor. Counsel for the Museum refused to present the proposed transaction to the  
26 Museum Board for consideration and discussion. Therefore, the sale could not be closed before  
27 the Hoffman’s foreclosure sale that was scheduled for January 27, 2016.

1           15.     Since the Bankruptcy Case was filed, the Debtor has continued to negotiate with  
2 interested parties for the purchase of certain assets, to enable the Debtor to repay its debts, but in  
3 a manner that will promote the Debtor's long-term goal of growing and supporting the Museum  
4 for the benefit of the community in McMinnville, Yamhill County, and the State of Oregon.  
5 With that goal in mind, the Debtor has received an offer and term sheet from George Schott or  
6 his designee (the "Buyer"), which the Debtor believes is the highest and best offer for the assets  
7 to be sold. The Buyer has no relation to the Debtor. The term sheet from the Buyer is available  
8 upon request, by contacting Debtor's counsel at (503) 417-0500, or by email at  
9 nhenderson@portlaw.com.

10           16.     The term sheet describing Buyer's offer constitutes, in the Debtor's view, the best  
11 offer to repay the Debtor's obligations while still promoting the Debtor's goals of preserving and  
12 supporting the Museum campus.

13           17.     Because of the potential impact on the Museum, the Debtor has repeatedly  
14 requested to meet with the Museum's board of directors, to discuss options and the potential  
15 ramifications of the proposed sale. To date, such a meeting has not occurred, but the Debtor  
16 remains ready willing and able to cooperate with the Museum to discuss alternative resolutions.  
17 The Debtor will also continue to market the Assets, and will continue discussing alternative sale  
18 terms with parties that have expressed interest.

19           18.     After the transaction the estate will still own various assets which it intends to  
20 utilize for the benefit of the Museum complex and the local McMinnville community. It is  
21 anticipated that all creditors should be paid in full, provided that the Museum honors its  
22 contractual obligation to pay taxes under the zero dollar triple-net lease for the water park and  
23 space museum.

24       /////

25       /////

26       /////

27       /////

28       /////

## JURISDICTION AND VENUE

19. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR 2100.1. Consideration of this motion constitutes a core proceeding within the meaning of 28 USC § 157(b)(2). The relief sought by this motion is governed by sections 105, 363 and 365 of the Bankruptcy Code. This motion is also governed by Bankruptcy Rules 2002, 6004, 6006 and 9007 and LBR 2002-1. Venue is proper under 28 USC § 1408.

## INFORMATION REQUIRED BY LBF 760.5

20. The following sale provisions are disclosed in accordance with applicable local rules and guidelines:

**Subsections of 11 U.S.C. § 363(f) relied upon for this Motion:** §363(f)(4) and (5) with respect to Yamhill County; § 363(f)(3) and (5) with respect to other liens.

**Buyer's name and relation to Debtor:** George Schott or his designees; no relation to Debtor.

**Property to be sold:** 1) The real property located at 490-500 NE Captain Michael King Smith Way, McMinnville, OR 97128, consisting of the water park building, the space museum building, and the surrounding parking lots. Such real property and improvements will constitute a new Yamhill County Real Property Tax Lot 600, to be created at the time of the Sale through recording certain deeds to effect property line adjustments. (see proposed plat map attached hereto Exhibit A); 2) certain personal property located in the water park and space museum buildings; and 3) aircraft described on Exhibit B attached hereto.

The property to be sold may be examined or previewed by appointment only. To schedule an appointment, contact Nicholas J. Henderson, Attorney for Debtor, at 503-417-0500, or via email: [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com).

**Gross Sales Price:** \$7,700,000

**Liens:**

All liens on the property total approximately \$9,291,720, of which the Debtor believes a total of \$2,000,000 need not be paid as secured claims, because the lien(s) are invalid, avoidable, or part or all of the underlying debt is not allowable. All tax consequences have been considered and it presently appears the sale will result in net proceeds to the estate after payment of valid liens, fees, costs and taxes of approximately: \$0.00

**Terms of Sale:**

The sale is not for substantially all of the Debtor's assets. Property line adjustments will be recorded as shown on Exhibit A, and new Tax Lot 600, and all improvements thereon shall be sold to Buyer, subject to easements in favor of Seller. The Purchase Price shall be paid in full, in cash, at closing. Purchaser shall assume Seller's lease obligations for Waterpark and Space Museum. Customary representations, warranties and conditions precedent for this type of transaction, including execution of definitive documentation containing specific terms for the Sale.

**Deadline for competing bids:**

Competing bids must be submitted to the Debtor no later than May 13, 2016, and must exceed the above offer by at least \$50,000, and be on the same or more favorable terms to the estate.

**Summary of available information regarding valuation, including any independent appraisals:**

Aircraft and related items were marketed for sale with an aviation expert prior to the filing of the petition for the above-captioned bankruptcy case. Real property has been marketed for sale by the Debtor. Appraisals available upon request to Attorney for Debtor, Nicholas J. Henderson, at 503-417-0500. Appraisals not available for all items, and may be outdated.

**ADDITIONAL INFORMATION**

21. Although there is little equity for the estate, the Sale is needed to pay secured creditors prior to additional litigation or foreclosure. There are not expected to be any taxes or expenses resulting from the sale.

22. A Sale is proposed in advance of a plan of reorganization because of timing concerns. Specifically, the Buyer desires to close transaction more promptly than can be

accommodated through Plan process, and secured creditors have expressed an intention to seek relief to pursue foreclosure efforts of a timely sale does not occur.

23. The following table sets forth information about lienholders (in order of priority):

<u>Name</u>	<u>Service Address (Per FRBP 7004)</u>	<u>Approx. Lien Amount</u>	<u>Proposed Treatment at Closing</u>
Yamhill County Assessor	c/o Scott Maytubby, County Assessor, 535 NE 5th St., Rm 42 McMinnville, OR 97128 cc: Jeffrey C. Misley, Esq.	\$1,229,318 (disputed; on appeal)	Funds held in escrow until pending tax appeal determines lien amount
Hoffman Construction Company of Oregon	c/o CT Corp System, Reg Agent 388 State St., Ste. 420 Salem, OR 97301 cc: Timothy J. Conway	\$2,144,990	Lien impressed upon proceeds until lien validity and priority, and value of collateral are established.
Gemcap Lending I, LLC	c/o National Registered Agents, Inc. 160 Greentree Dr., Ste 101 Dover, DE 19904 cc: Robert A. Boghosian, Esq.	\$5,917,410	Lien impressed upon proceeds until lien validity and priority, and value of collateral are established.

24. All liens described above shall attach to the sale proceeds in the same order of priority they attached to the Assets to be sold, and shall be held in escrow or trust until the Bankruptcy Court orders payment.

25. **A HEARING ON THIS NOTICE AND MOTION AND ANY OBJECTIONS TO THE SALE OR FEES DESCRIBED HEREIN SHALL BE HELD AT 1:30 P.M. ON MAY 31, 2016 AT THE U.S. Bankruptcy Court, Courtroom # 3, 1001 SW 5th Ave., 7th Floor, Portland, OR 97204, and testimony will be received if offered and admissible. Parties appearing from outside of the local area can appear by telephone at (888) 684-8852, access code 5870400. Local Bankruptcy Form 888 regarding telephone appearances is also provided with this Notice.**

26. I certify that on March 29, 2016, a copy of this document was served, pursuant to FRBP 7004, on the debtor(s), trustee, if any, U.S. Trustee, each named lien holder at the address listed above, Creditors' Committee Chairperson, if any, and their respective attorneys; and that a copy was also served that date, pursuant to FRBP 2002(a), on all creditors and parties requesting

1 special notice as listed in the Court's records that were obtained on March 29, 2016, a copy of  
2 which is attached to the original document filed with the Bankruptcy Court.

3 27. For further information, please contact the undersigned Debtor's counsel, using  
4 the contact information below.

5 WHEREFORE, the Debtor respectfully requests that the Court enter an order approving  
6 the Sale of the Assets to the Buyer, consistent with the terms contained in the Motion and Notice,  
7 or to the highest and best bidder that submits a competing bid in accordance with the terms of  
8 this notice, as set forth above.

9 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of March, 2016.

10 **MOTSCHENBACHER & BLATTNER LLP**

11 By /s/ Nicholas J. Henderson  
12 Nicholas J. Henderson  
13 Motschenbacher & Blattner LLP  
14 117 SW Taylor Street, Suite 300  
15 Portland, OR 97204  
16 [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com)  
17 Attorneys for Debtor  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



# Evergreen Property Reconfiguration



**EXHIBIT B**  
**AIRCRAFT AND ARTIFACTS TO BE PURCHASED**

**Display planes (8 total)**

- Corsair FG-1D, N67HP
- P-51D Mustang, N51HD
- Canso PBY 5-A
- Cassutt Racer
- Ryan NYP - Spirit of St. Louis
- FW-190A Replica
- Ryan ST3KR #2161
- DC-3

**Artifacts**

- Mark Hatfield Sculpture
- Rory Sculpture
- JN4 Curtis
- Victor Atiyeh Sculpture
- By the Seat of His Pants
- 1931 Ford Model A
- Mars Exploration Rover